



Agricultural Marketing Service

9 CFR Part 201

RIN 0581-AE18

[Doc. No. AMS-FTPP-22-0046]

Poultry Growing Tournament Systems: Fairness and Related Concerns

AGENCY: Agricultural Marketing Service, U.S. Department of Agriculture.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) seeks comments and information to inform policy development and future rulemaking proposals regarding the use of poultry grower ranking systems commonly known as tournaments in contract poultry production. AMS seeks this input in response to numerous complaints from poultry growers about the use of tournament systems. Comments in response to this request would help AMS tailor further rulemaking in addition to that already planned and under way to address specific industry practices in relation to tournament systems.

DATES: Comments must be received by **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments must be submitted through the Federal e-rulemaking portal at <https://www.regulations.gov>, and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Chief Legal Officer/Policy Advisor, Packers and Stockyards Division, USDA AMS Fair Trade

Practices Program, 1400 Independence Ave. SW, Washington, DC 20250; Phone: (202) 690-4355; or email: *s.brett.offutt@usda.gov*.

SUPPLEMENTARY INFORMATION: The majority of growers producing poultry under production contracts are paid under a poultry grower ranking or “tournament” pay system. Under tournament systems, vertically integrated poultry companies, known as “integrators”, contract with farmers who serve as growers. Integrators provide growers with birds and feed; and growers provide facilities and labor to raise birds to slaughter weight. Grower compensation is based on a grouping, ranking, or comparison of poultry growers whose poultry was harvested during a specified period, usually one week. Tournament group averages are established for formulaic flock performance metrics, and growers are ranked against the averages. Grower contract base pay rate is adjusted by the individual grower’s deviation for group average. Growers performing better than average receive increased pay while below average growers’ contract pay rate is reduced.

Over many years, the U.S. Department of Agriculture (USDA) has received numerous complaints from poultry growers about the use of tournament systems and many have suggested that USDA should ban, restrict, or condition the use of tournament systems or particular aspects of those systems. These concerns, and countervailing views, were extensively summarized in USDA’s withdrawal of previous proposed rulemaking on poultry tournaments, as well as in transcripts of previous listening sessions conducted by USDA and the Department of Justice (DOJ).¹

¹ For a discussion of past views regarding poultry tournament systems, see, e.g., Agricultural Marketing Service, USDA, “Poultry Grower Ranking Systems; Withdrawal of Proposed Rule,” 86 FR 60779, November 4, 2021, available at <https://www.federalregister.gov/documents/2021/11/04/2021-23945/poultry-grower-ranking-systems-withdrawal-of-proposed-rule>. See also Transcript, United States Department of Justice, United States Department of Agriculture, Public Workshops Exploring Competition in Agriculture: Poultry Workshop May 21, 2010, Normal, Alabama. Additionally, see Agricultural Marketing Service, USDA, “Transparency in Poultry Contracting and Tournaments,” RIN 0581-AE03, publication in the Federal Register forthcoming, May/June 2022.

USDA has made previous attempts to address grower concerns arising from the use of poultry growing arrangements and poultry grower ranking systems.² The first proposed rule, in 2010, would have required live poultry dealers—when paying growers under poultry grower ranking systems—to pay growers the same base pay for growing the same type and kind of poultry. The 2010 proposed rule further would have required that tournament system growers be settled in groups with other growers with similar house types. USDA did not finalize certain provisions related to poultry contracting. In December 2016, it modified the original proposal and published a second proposed rule.³

The 2016 proposed rule would have identified criteria that the Secretary could consider when determining whether a live poultry dealer's use of a system for ranking poultry growers for settlement purposes is unfair, unjustly discriminatory, or deceptive or gives an undue or unreasonable preference, advantage, prejudice, or disadvantage. The 2016 proposed rule was formally withdrawn in 2021.⁴

Executive Order 14036 – Promoting Competition in the American Economy directs the Secretary of Agriculture to address unfair treatment of farmers and improve conditions of competition in their markets by considering rulemaking to address, among other things, certain practices related to poultry grower ranking systems.⁵ AMS has considered that direction in undertaking this Advance Notice of Proposed Rulemaking (ANPR).

Additionally, USDA is proposing in a separate rulemaking, under RIN 0581-AE03, a series of new transparency measures designed to address many grower concerns relating to deception and lack of access to critical information in connection with poultry contracting and tournament systems.⁶ Furthermore, USDA is taking a range of steps to

² 75 FR 35338; June 22, 2010.

³ 81 FR 92723; December 20, 2016.

⁴ 86 FR 60779, November 4, 2021.

⁵ 86 FR 36987; July 9, 2021.

⁶ Agricultural Marketing Service, USDA, “Transparency in Poultry Contracting and Tournaments,” RIN 0581-AE03, publication in the Federal Register forthcoming, May/June 2022.

enhance fair and competitive markets in the meat and poultry sectors.⁷ For example, under the American Rescue Plan Act’s provision to enhance supply chain resiliency, USDA is investing directly into the creation of new, and expansion of existing, local and regional meat and poultry processing enterprises. Also this year, USDA and DOJ established a joint complaints and tips portal, www.farmerfairness.gov, to enable both departments to respond in a more coordinated manner to a range of competition and fair markets concerns. USDA has also announced rulemakings to address general matters relating to unfair, deceptive, and unjustly discriminatory practices, undue preferences and prejudices, and competitive harms under sections 202(a) and 202(b) of the Packers and Stockyards Act of 1921, 7 U.S.C. 181 *et seq.*, 192.⁸ Rules on those topics will be forthcoming.

Against that policy backdrop, AMS is considering further policy development and rulemaking under the Packers and Stockyards Act, as amended, to address, through specific prohibitions, limits, and/or conditionalities, potential unfairness that may arise from the use of the tournament contracts in the poultry sector. The goal of this ANPR is to obtain information on the industry and assess the extent to which unfairness and deception, where it may exist, can be remedied through additional regulation to level the playing field for growers. The focus of any rulemaking would be contract terms in contracts relating to all aspects of poultry production that may be unfair to growers. Such rulemaking would also address the regulation of the operation of those contracts so that it would be consistent with those principles.

⁷ White House, “FACT SHEET: The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain,” January 3, 2022, available at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/03/fact-sheet-the-biden-harris-action-plan-for-a-fairer-more-competitive-and-more-resilient-meat-and-poultry-supply-chain/>; USDA, “Meat and Poultry Supply Chain,” available at <https://www.usda.gov/meat> (last accessed May 2022).

⁸ See Office of Information and Regulatory Affairs, Office of Management and Budget, Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions, available at <https://www.reginfo.gov/public/do/eAgendaMain> (last accessed May 2022).

All views are solicited so that every aspect of this potential regulation may be studied prior to formulating a proposed rule by AMS. This request for public comment does not constitute notification that any aspect described in this document is being proposed or adopted. At such future time, pursuant to the requirements set forth in the Regulatory Flexibility Act, Executive Order 12866, and other relevant laws and Executive Orders, AMS would consider the economic impact that implementation of any prohibitions, limits, or conditionalities, including costs and benefits and impacts on small entities, and would prepare a full regulatory impact analysis and a regulatory flexibility analysis for inclusion in any subsequent rulemaking action. The informational impact of this action would also be considered under the Paperwork Reduction Act, and civil rights impacts would be evaluated under a Civil Rights Impact Analysis, among other relevant regulatory analyses.

Background

Live poultry dealers often operate as monopsonists⁹ or oligopsonists¹⁰ in a local market.¹¹ According to MacDonald and Key,¹² about one quarter of contract growers reported that there was just one live poultry dealer in their area; another quarter reported two; another quarter reported three; and the rest reported four or more. Owing to their greater negotiating power than that of the poultry growers with whom they contract, live poultry dealers set the terms of the contracts and important aspects of their execution,

⁹ Merriam-Webster online dictionary: A monopsonist is one who is a single buyer for a product or service of many sellers. <https://www.merriam-webster.com/dictionary/monopsonist>; accessed 3/8/2022.

¹⁰ Merriam-Webster online dictionary: Oligopsony is a market situation in which each of a few buyers exerts a disproportionate influence on the market. An oligopsonist is a member of an oligopsonistic industry or market. <https://www.merriam-webster.com/dictionary/oligopsonist>; accessed 3/8/2022.

¹¹ The description set forth in this background is drawn largely from the analyses found in Agricultural Marketing Service, USDA, “Transparency in Poultry Contracting and Tournaments,” RIN 0581-AE03, publication in the Federal Register forthcoming, May/June 2022. Please consult that rulemaking for additional detail.

¹² MacDonald, James M., and Nigel Key. “Market Power in Poultry Production Contracting? Evidence from a Farm Survey”. *Journal of Agricultural and Applied Economics* 44 (November 2012): 477-490. See also, MacDonald, James M. *Technology, Organization, and Financial Performance in U.S. Broiler Production, EIB-126*, U.S. Department of Agriculture, Economic Research Service, (June 2014): 29-30.

such as the frequency of individual flock placements they receive over any particular time period.

Most growers producing poultry under production contracts are paid under a poultry grower ranking or “tournament” pay system. Under tournament systems, the contract between the poultry grower and the company for whom the grower raises poultry for slaughter provides for payment to the grower based on a grouping, ranking, or comparison of poultry growers delivering poultry to the same company during a specified period.

Under tournament contracts, integrators provide the birds, the feed, and veterinary treatment as needed for the growing flock. The poultry grower provides the poultry growing facility, flock management, labor, and utilities (water, electricity, environmental control) required during flock growout. At the end of growout, the poultry company collects and weighs the mature poultry and pays the grower according to their individual flock’s performance as compared to the performance of all other growers’ flocks in the tournament.

Poultry grower investment is substantial. A 2011 study estimated a cost of \$924,000 for site preparation, construction, and necessary equipment for four 25,000-square-foot poultry houses¹³ (or \$231,000 per house) in rural Georgia at that time, independent of the cost for the land.¹⁴ Costs for establishing poultry houses have increased substantially since 2011, due to the advancement of new technologies in poultry housing and the increased cost of materials. AMS estimates current construction costs at \$350,000 to \$400,000 per poultry house.¹⁵ A poultry growing contract includes

¹³ Assuming a target weight of 6 pounds, an average 25,000 square foot house should yield about 21,500 birds per flock.

¹⁴ Cunningham, Dan L., and Brian D. Fairchild. “Broiler Production Systems in Georgia Costs and Returns Analysis 2011-2012.” *UGA Cooperative Extension Bulletin* 1240 (November 2011), University of Georgia Cooperative Extension.

¹⁵ See, for example, Cunningham and Fairchild (November 2011) Op. Cit.; Simpson, Eugene, Joseph Hess and Paul Brown, *Economic Impact of a New Broiler House in Alabama*, Alabama A&M & Auburn

the live poultry dealer's specifications for the poultry housing and equipment the growers are required to supply under the contract. At times, the live poultry dealer may encourage, incentivize, or even require a poultry grower to upgrade existing housing or equipment in order to renew or revise an existing contract.

Additionally, some live poultry dealers provide income estimates to prospective growers and lenders. Grower advocate groups have complained these estimates are generally based on simple "average pay" projections, which are insufficient given fluctuations in grower payments, particularly under the tournament system discussed next.¹⁶

Integrators use a relative ranking to allocate payments among tournament participants. Tournament groupings are comprised of growers whose flocks are harvested within a specified time period, usually a week. Tournament group averages are established for formulaic flock performance metrics, and growers are ranked against the averages. Grower contract base pay rate is adjusted by the individual grower's deviation from group average. Growers performing better than average receive increased pay while below average growers' contract pay rate is reduced.

In a simplified example, the poultry company places flocks with ten growers (tournament group) under contract to deliver the same size of finished poultry to the company's processing plant at the end of a specified growout period. Upon harvest, each grower's performance with respect to the weight of poultry produced and the amount of poultry feed used during flock growout is determined. The company then compares individual grower results against average results for all growers in the group and ranks individual growers according to their relative performance within the group of ten

Universities Extension, March 1, 2019 (estimating a \$479,160 construction cost for a 39,600 square foot broiler house).

¹⁶ "A Poultry Grower's Guide to FSA Loans" Rural Advancement Foundation International. July 2017, available at <https://www.rafiusa.org/blog/a-poultry-growers-guide-to-fsa-loans/>.

growers. Grower pay comprises a contract base amount per pound of poultry produced plus or minus an adjustment based on the grower's deviation from average within the tournament grouping for that specific growout period. For example, a contract-based pay rate of \$.06 per pound might be adjusted to \$.0725 for an above average grower, while a below average grower may be paid \$.048.

Group composition risk is associated with the composition and performance of other growers in their settlement groups. A particular grower's pay is impacted by the performance of others in the tournament. Growers have no control over the other tournament members' effort and performance, nor over with which other growers they are grouped. An individual grower's effort and performance can be static, and yet that grower's payments could fluctuate based on the grower's relative position in the settlement group. Further, changes in payment may not be commensurate with the changes in grower's effort and performance. These characteristics of the tournament system can add to the variability of pay and affect the ability of growers to plan and measure their own effort and performance. On the other hand, the system is designed to incentivize participants to do their best in the hopes of gaining higher rewards.

Integrators also determine which growers are in each settlement group. While growers in a group must have similar flock finishing times, a live poultry dealer could move a grower into a different grouping by altering layout times to change the week that a grower's broilers are processed. An individual grower may perform consistently in an average performing pool, but if the integrator places that grower in a pool with more outstanding growers, those outstanding growers raise the group average and reduce the fees paid to the individual. At its discretion or per the poultry growing arrangement, an integrator may remove certain growers it considers to be outliers from a settlement pool. This would likely affect the average performance standard for the settlement and affect the remaining growers' pay. Group composition risk can be more relevant to some

growers when a tournament's settlement group contains growers with different quality or ages of grow houses.

A number of variable factors can influence individual grower performance, including the number, breed, sex, and condition of the young birds and the contents and quality of the feed provided by the poultry company, the growing facility environment, and the management practices of individual growers. Growers have expressed concern that the variability of inputs among tournament participants—for reasons outside of the grower's control but which may be within the control of the integrator—may impair the integrity of tournaments, and adversely affects the integrator's ability to effectively convey incentives to motivate optimal grower performance. Many growers have complained that tournament systems are inherently unfair because growers have no control over the inputs they receive from poultry companies, and thus have limited control over their performance and earnings. Commenters have also suggested input variability can be used as a tool for unlawful discrimination, retaliation, and deception in the development and execution of poultry growing contracts.

Agricultural production is an inherently risky endeavor, and returns have some level of risk no matter the marketing channel or structural arrangement. However, researchers have noted that in addition to mitigating the risks of input cost and output price variation, the tournament system can also help insulate poultry growers from some aspects of what are known as common production risks. These are systematic risks common to all growers in a tournament such as weather or widespread disease, feed quality, or genetic strains. This academic research finds that since those risks are likely to affect all growers in a region, compensation is less likely to be adversely affected under a tournament contract than it would be on a simple price per unit of weight

contract.¹⁷ For example, if an unusual heat wave caused all growers in a tournament to experience poorer feed conversion, all tournament growers may require more feed and a longer grow period for their flocks to reach the target weight. They would receive the same pay for the weight produced, while not being penalized for the higher feed costs incurred to produce that weight.

At the same time, tournament contracts still leave growers exposed to some common risks. For example, when plants had to reduce processing capacity due to the Covid pandemic, growers experienced reduced compensation to the extent that they received fewer or less dense placements from the integrators. Moreover, as noted, no contract type will protect growers from all market risks. Tournament systems do not insulate growers from the other risks of contracts discussed above such as the financial risk, liquidity risk, the risk from incomplete contracts, and the lack of control over inputs and production variables. Tournaments also introduce new categories of risks to growers: Group composition risk and added risks of settlement-related deception or fraud. The risks of deception or fraud as discussed above include the inability of growers to verify the accuracy of payments, and to detect discrimination or retaliation.

In a rulemaking being published simultaneously as a separate notice in the Federal Register, USDA has proposed enhancing transparency in poultry growing arrangements to address deception risks and information asymmetries that growers face in modern, vertically integrated markets. The first part of the rule would give growers information regarding realistic outcomes relevant to poultry growing arrangements and poultry housing upgrades—information such as the number of bird placements per year and stocking density, earnings realized by other poultry growers displayed across quintiles and compared to other complexes, sale-of-farm policies, and more. The second part of

¹⁷ See, for example, Tsoulouhas, Theofanis and Tomislav Vukina. “Regulating Broiler Contracts: Tournaments Versus Fixed Performance Standards”. *American Journal of Agricultural Economics* 83 (2001): 1062-1073.

the rule would give poultry growers information about the inputs they receive under their poultry growing arrangements, to enable them to be more effective growers and to protect them against deception and other potential abuses. Information—including stocking density of the placement, the breeder facility, breeder flock age, health impairments, and more—would be provided when the inputs are delivered and when any tournament settlement is completed.

AMS believes that transparency will be transformative in securing a more level playing field for growers and enabling a marketplace with fairer contracts and the fairer operation of those contracts. Transparency will be useful not only in addressing deception risks, in particular those arising from information asymmetries, but also in providing data and information needed to assess a range of potentially unfair, unjustly discriminatory, and other unreasonable practices that may be present or arise from time to time in the poultry marketplace.

Transparency may also complement requirements for poultry production contracts set by USDA’s Farm Services Agency (FSA), which manages a loan guarantee program that covers poultry lending.¹⁸ Under FSA standards, contracts must:

- a) be for a minimum period of 3 years
- b) provide for termination based on objective “for cause” criteria only
- c) require that the grower be notified of specific reasons for cancellation
- d) provide assurance of the grower’s opportunity to generate enough income to ensure repayment of the loan by incorporating requirements such as a minimum number of flocks per year, minimum number of bird placements per year, or similar quantifiable requirements.

¹⁸ USDA Farm Service Agency, *Guaranteed Loan Making and Servicing 2-FLP (Revision 1)* pp. 8-86 (October 2008). https://www.fsa.usda.gov/Internet/FSA_File/2-flp.pdf; accessed 1/3/2022.

AMS recognizes that measures beyond disclosure and transparency may be necessary to address those practices, given the economic power imbalances and competition concerns that exist in today's markets. We also believe that the market may benefit from greater certainty around which specific practices relating to tournaments would be considered unfair, unjustly discriminatory, or otherwise unreasonable under the Packers and Stockyards Act.

Accordingly, we are considering further regulatory steps to address live poultry dealer conduct and business practices related to tournaments. Specific areas of consideration include whether there is a need for, and if so, how USDA could and should establish, rules relating to:

- a) Flock placement and density guarantees, including in relation to debt levels incurred by the grower;
- b) Quality and timing with respect to inputs provided under a contract that are factored into calculations in a tournament;
- c) Tournament payment allocations resulting in degradation of contractual base pay rates;
- d) Payment floors in relation to efforts or investments made by a grower, as opposed to a comparison on efforts or investments made by other growers;
- e) How integrators place a grower into tournament settlement groupings (also known as league composition);
- f) Oversight of an integrator's local agents;
- g) Alignment of incentives between growers and integrators, such as the incorporation of wholesale values into payment mechanisms for growers or the incorporation of grower outcomes into executive compensation mechanisms;
- h) Matching capital investment requirements with the length of poultry production contracts and the usable life of an asset;

i) Obligations to provide growers with notice of breach and opportunities to cure when contract terms are not met;

j) Opportunities for growers to form cooperatives so as to enable growers to collectively negotiate or arbitrate terms of poultry growing arrangements;

k) Competitiveness of input markets, including relating to chick genetics, feed, and access to veterinary care;

l) Information exchanges in poultry competition and ways to improve information access;

m) Lending institutions that provide credit relating to poultry production agreements, their relationships to integrators, and their responsibilities to borrowers, including underserved borrowers with respect to non-discriminatory and fair credit opportunities;

n) Availability of insurance and risk-management tools for growers and the potential for risk-sharing with integrators with respect to retail market demand changes.

AMS also seeks comment on whether there should be regulations that condition integrators' permissible use of the tournament system to circumstances in which they offer growers one or more of the following options:

i) Allowing each grower to decide whether they want to be compared to other growers and to opt out of such comparisons;

ii) Treating growers substantially equally regarding inputs, delivery, and payment over a given time period;

iii) Guaranteeing growers a base price that enables the grower to pay for any debt incurred as result of technical specifications provided by the live poultry dealer plus an appropriate profit; and

iv) Permitting growers to form cooperatives so as to cooperate and communicate amongst themselves and to negotiate collectively with the live poultry dealer.

Additionally, AMS is focused on improving research in poultry market practices and competition. AMS recognizes the presence of gaps in publicly available data and analysis with respect to poultry grower competition matters, which serves as a barrier for regulators and the public to recognizing and addressing potentially problematic practices in the poultry sector. In part, this may be because robust data of the quality necessary to provide useful insights has not been collected or made available on a regular basis or is otherwise made available only to private market participants. AMS and other USDA agencies have heard concerns regarding obstacles, burdens, and costs that may exist with respect to growers freely and fully participating in surveys, including risks of retaliation against growers, the costs to growers of participating in surveys, the burden of reporting due to duplicate requests, inefficiency in survey or gathering mechanisms, and lack of appropriate digital access by the producer. Concerns have also been noted regarding whether the information collected permits a sufficiently targeted analysis with respect to poultry growing, as opposed to the farm's economics as a whole.

With respect to the areas of focus noted above, as well as more broadly, AMS is interested in the manner which the tournament system pay mechanisms may be modified to better meet the needs of poultry market participants, in particular growers, while still retaining market flexibility and an appropriate role for performance-based incentives.

Request for Comments and Information

As noted above, USDA has received numerous comments expressing concern about the use of tournaments in poultry production, as well as expressions of support for the tournament system. To ensure we have the most up-to-date analyses and views, we invite comments, including additional facts and data and views regarding their relevance to USDA or other legal authorities, with which to evaluate the industry's use of tournament systems and develop policy or regulations. In particular, AMS invites responses to the following questions:

1) What is the tournament system's intended purpose and does the system achieve its intended purpose(s)?

a) If yes, please describe what they are and how specific elements of the system help achieve those purposes.

b) If not, why not? Moreover, please describe what you believe the intended purpose(s) are.

c) Additionally, please describe what you believe should be the purpose of a payment and settlement system between integrators and growers?

2) What specific practices under the tournament system are the most problematic, and why?

3) Which practices should be addressed through regulatory or other administrative steps? Are regulatory steps the only path to curbing these practices?

a) Should certain practices be subject to whole or partial prohibitions, limits, conditionalities? If so, which ones? Why or why not?

b) Should certain practices be subject to additional disclosures? Why or why not?

c) Please explain any reasoning for why such specific practices may be unfair, unjustly discriminatory, provide undue preferences or prejudices, are deceptive, or are otherwise unreasonable or anticompetitive under the law. If you are suggesting a particular regulatory standard for any such terms, please define it clearly. If you suggest administrative (non-regulatory) steps, please explain those.

d) Do any specific practices harm competition among growers, among poultry companies for the services of growers, or among poultry companies in the sale of poultry products?

f) Do the practices concerned give rise to significant harms that are unavoidable by certain parties or that undermine supply chain resiliency, price discovery, or open, competitive markets?

g) Are there competitive or other benefits or legitimate business justifications that should be taken into consideration with respect to such practices?

4) For the areas of focus listed as (a) through (n) in the introduction above:

a) Are there minimum regulatory standards that would help address marketplace practices of concern, and if so, what are they? Please discuss both the marketplace concerns and the way that the minimum standards may address those concerns.

b) Are any of the areas more, or less, amenable to transparency-oriented solutions, such as disclosures? Please explain why or why not.

c) For these areas, please share any views regarding the scope and applicability, or inapplicability, of relevant USDA authorities, in particular (but not necessarily exclusively) the Packers and Stockyards Act.

d) Are there any other Federal or state authorities that may be relevant to USDA's analysis of these issues?

5) Please comment on the specific conditional approaches to the tournament system listed as (i) through (iv) in the introduction above.

a) Which aspects of the tournament system are unfair as to warrant the possible conditions set forth? Do the conditional approaches appropriately address those concerns? Why or why not.

b) What are the strengths and limitations, and costs and benefits, for each approach?

c) Are there any competition implications to their adoption?

d) Are there any other risks that should be considered with respect to the approaches?

e) With particular respect to the cooperative negotiation option:

(I) Are there additional steps that USDA could take under the laws governing cooperatives that could facilitate the formation of cooperatives for those engaged in providing growout services?

(II) Alternatively, to what extent can poultry grower organizations adequately rely on the Capper-Volstead Act (in particular it's exemption from the antitrust statutes) to accomplish goals such as cooperating to negotiate or arbitrate for better terms and conditions of contracts? If not, why not?

f) For all of these conditions, please share any views regarding the scope and applicability, or limits and inapplicability, of relevant USDA authorities, in particular the Packers and Stockyards Act, and whether any other Federal or state authorities are also relevant.

6) With respect to the following areas, to what extent can the tournament system pay mechanisms be modified to achieve the following goals, while still retaining performance-based incentives? If so, how?

a) Can they be modified to avoid degradation of base pay rates?

b) Can they be modified to reduce variability or unpredictability in outcomes (at least over any short-term horizon)?

c) Can they be modified to better reflect factors that are largely within own the control of growers?

d) Can they be modified so that an integrator cannot terminate without cause, and if so, under what conditions would performance in the tournament be a basis for terminating a contract?

e) Are there other targeted ways in which they should be modified?

f) If not, what alternatives may exist to it, and what risks might arise from such alternatives? What are the economic implications, including relating to competition, that may arise from the alternatives and any transition to them?

g) For these questions, please share any views regarding the scope and applicability, or inapplicability, of relevant USDA authorities, in particular (but not necessarily exclusively) the Packers and Stockyards Act, and whether any other Federal or state authorities are also relevant.

7) We further seek comments on the following additional related matters:

a) Should capital investment provisions (9 CFR 201.216) be revised to address compensation requirements when integrators require upgrades beyond the original housing specification?

b) Are there minimum standards or protections needed to prevent interference with the rights of growers to sell their farms? If so, what should they be?

c) Are protections needed against premature contract cancellation without reasonable cause, and if so, how should they be designed?

d) Should the remedy for breach of contract rules (9 CFR 201.217) be revised to provide for a specific time period that constitutes a reasonable period to remedy a breach of contract that could lead to termination (and if so, how long)?

e) Should provisions relating to the suspension of the delivery of birds (9 CFR 201.215) be revised to protect against arbitrary suspensions of flocks, and if so, how?

f) For these questions, please share any views regarding the scope and applicability, or inapplicability, of relevant USDA authorities, in particular (but not necessarily exclusively) the Packers and Stockyards Act, and whether any other Federal or state authorities are also relevant.

8) What role can reforms of lending and loan guarantee systems play to ensure better alignment between borrowers and lenders? Consider the following questions and please explain what authorities USDA or other relevant agencies might deploy, if any.

a) Should borrower income be evaluated by lending institutions for justification of loan cash-flow only based on the minimum or lowest quartile of returns, or based on median returns, or in some other way?

b) Should limitations or additional transparency cover the relationship between lenders and integrators? Are steering payments, prepayment penalties, or other finders' fees of concern?

c) Should standards and oversight be improved for ensuring that credit is fair and nondiscriminatory? If so, how?

d) How might relevant agencies better monitor the lending marketplace, including through data collection, reporting, and supervision?

9) We also invite input on how to improve data collection and research generally.

a) What data and information should be collected to assist with analyzing the concerns highlighted above?

b) How can that information be more effectively collected?

c) In what ways can AMS or USDA's research agencies make that information more available to growers, academics, smaller market participants, and other relevant parties?

d) Please discuss concerns or risks with respect to confidentiality or collusion that should be considered as well.

e) How might USDA support additional academic research with respect to poultry market practices and competition?

10) Are there other approaches or proposals pertaining to regulation of the tournament system that USDA should consider?

We invite all comments, suggestions, information, and data that would inform our thinking on these areas. We are particularly interested in views and information from poultry companies that use tournament systems, from poultry growers who operate under such arrangements, from rural communities that have experience with them, and from other participants in the food supply chain. To the maximum extent possible, and to facilitate effectiveness by AMS in analyzing the information, please identify submitted comments by referring to the enumerated questions in this request.

Additionally, please ensure that your comments to this ANPR are *separate* from any comments that you may submit to other proposed rules or requests for information under the Packers and Stockyards Act. To the extent that your comment to this ANPR repeats information you are filing in another comment file to AMS, you may reference that other filing by name and date of your submission or simply repeat that information in your submission to this ANPR.

Comments received by the **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** deadline will be considered.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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